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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

S. GREGORY SMITH

Case No.: GS-8B

Serial No.: 09/148,090

Group Art Unit: 3613

Filed: September 3, 1998

Examiner: D. Butler

For: TILT CONTROL APPARATUS FOR VEHICLES

Wilmington, Delaware
January 22, 1999

Asst. Commissioner for Patents
Washington, DC 20231

Sir:

REPLY UNDER 37 CFR 1.111

Applicant respectfully requests reconsideration of the rejections in the Office Action of October 26, 1998.

1. Rejections numbered 4. and 5. are provisional double patenting rejections based on "copending Application No. 08/794,100 filed February 3, 1997" to Applicant and Michael W. Halpin.

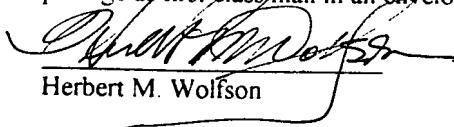
Application No. 08/794,100 became abandoned on December 12, 1998. Hence, Applicant requests the withdrawal of these double patenting rejections as being no longer applicable.

2. In rejection numbered 7., the Examiner states:

"Claims 1-6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 5,437,354 to (SMITH?) Wolf(354) or claims 1-3 of U.S. Patent No. 5,529,153 to (SMITH?) Wolf(153) in view of Hanna(076)."

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Asst. Commissioner for Patents, Washington, DC 20231.


Herbert M. Wolfson

1/22/99
Date

Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims differ from the invention defined by the noted patents in the feature of remote connection of parts. The instant claimed invention is an obvious variation of the invention defined by the noted patents.

The secondary reference to Hanna(076) teaches connecting a strut 9 remotely to a source or chamber 101+ by way of a hose.

It would have been obvious at the time the invention was made to one having ordinary skill in the art to which the invention pertains to modify the invention defined by the claims of each of the principal patents to Smith(354) and Smith(153) to form the tilt-control thereof into two parts as taught by Hanna(076) connected together by a fluid pressure hose in that remotely locating one or more of the elements relative to each other provides for facilitating more efficient use of space in the vehicle and provides for securement of the liquid and/or air pressure device in an area of the vehicle or its frame less affected by environmental concerns such as heat, water, dirt, etc. Also, it would have been obvious to one having ordinary skill in the art to make the above modification since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179."

Applicant respectfully traverses this rejection.

On August 12, 1998, Applicant's attorney discussed, with the Examiner, Mr. Halpin's contribution to the invention as claimed in the copending application No. 08/794,100, i.e., remotely locating at least one element relative to the others for facilitating more efficient use of space than in the formerly integral structure. In view of Hanna'076, this contribution was deemed to be a non-patentable contribution. Hence, it was concluded that Dr. Smith, the sole patentee of U.S. 4,437,354 and U.S. 5,529,153 was also the sole inventor of the subject application; and the subject application in the name of Dr. Smith was filed.

Accordingly, under 35 USC 102(e), which requires the description of the subject invention in a patent granted to another, Smith(354) and Smith(153) are no longer references against Applicant Smith's instant application. Withdrawal of the rejection of Claims 1-6 is respectfully requested.

3. In rejection numbered 8, the Examiner has rejected Claims 7-8 based on Smith(354) or Smith(153) in view of Hanna(076) as combined in paragraph numbered 7 further in view of Hamilton or Komossa et. al.

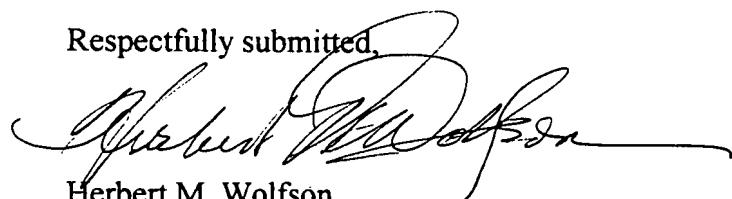
The Examiner states:

"It would have been obvious at the time the invention was made to one having ordinary skill in the art to which the invention pertains to modify the invention defined by the claims of each of the principal patents to Smith(354) and Smith(153), as modified, to include a pressure relief or pressure release valve as taught by each of the references to Hamilton(5026248) and Komossa et al.(4765445), for permitting the release of fluid pressure should the pressure exceed a pre-set or predetermined value."

As discussed in Section 2. above, since Smith(354) and Smith(153) are no longer applicable references, withdrawal of the rejections of Claims 7 and 8 is also respectfully requested.

4. In accordance with paragraph numbered 6 of the Office Action, a timely filed terminal disclaimer in compliance with 37 CFR 1.321 will be filed upon an indication of allowability of Claims 1-7.

Respectfully submitted,



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